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IN THE
COURT OF APPEALS OF INDIANA

JAMES W. ARTHUR, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 40A05-0605-CR-252
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0309-FA-195

March 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

James W. Arthur, Jr. was found guilty of child molesting[1] as a Class A felony and child molesting[2] as a Class C felony after a bench trial and was sentenced to forty years and six years respectively with the sentences to run consecutively. He appeals raising two issues, which we restate as:

I. Whether sufficient evidence was presented to support his convictions; and

II. Whether his sentence was inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

Arthur was married to Victoria Arthur, and two children were born during the marriage, J.A., born on September 5, 1995, and D.A., born on August 13, 1998. From approximately May 2002 until January 2003, the family lived in a white farmhouse in Jennings County. In November 2002, D.A. was staying with her great-aunt Eunice and told Eunice that Arthur had hurt her in her "pee-pee hole." *Tr*. at 162. The same night, D.A. repeated this story to Eunice's husband and also told another great-aunt, Jonnette, that Arthur had put his "thing" in her and hurt her. *Id*. at 194. Jonnette confirmed that D.A. was referring to Arthur's penis by showing D.A. a drawing of a male sex organ. *Id*. The next day, D.A.'s maternal grandmother, Melody Harmon, went to Eunice's house, and D.A. told her that "daddy had been hurting her" and put two fingers between her legs to show how he had hurt her. *Id*. at 208.

[1] *See* IC 35-42-4-3(a).

On November 8, 2002, D.A. was interviewed by Indiana State Police Detective Rick Roseberry, but did not disclose the abuse by Arthur at that time. Detective Roseberry recommended that D.A. be taken to a physician for an evaluation. On November 11, 2002, D.A. was evaluated by her family practitioner, Dr. John Scandrett. The results of this physical examination were inconclusive as to whether sexual abuse had occurred, but Dr. Scandrett testified at trial that physical examinations for sexual abuse are frequently inconclusive. *Id*. at 323.

On September 3, 2003, Arthur was charged with child molesting as a Class A felony and child molesting as a Class C felony. A bench trial was held on March 13 and 14, 2006. At trial, D.A. testified that Arthur had touched her "private" on at least ten occasions with both his hand and his "privates." *Id*. at 132, 134. She stated that he had put his finger inside of her "private" and had put his "private" inside of her "private." *Id*. at 132-33. Eunice, Eunice's husband, Jonnette, and Melody all testified that D.A. had told them that Arthur had molested her. *Id*. at 160-61, 187-88, 194, 208. D.A.'s mother, Victoria, also testified that D.A. had told her in January 2003 that "daddy hurt her" and that "he stuck his thing in her pee-pee." *Id*. at 27. Additionally, D.A.'s therapist stated at trial that D.A. had disclosed what Arthur had done to her and used anatomically correct dolls to show a male doll's penis inside of a female doll. *Id*. at 291-92.

At the conclusion of the trial, the trial court found Arthur guilty of Class A felony child molesting and Class C felony child molesting. On April 24, 2006, the trial court

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[2] *See* IC 35-42-4-3(b).

sentenced Arthur to forty years for the Class A felony and six years for the Class C felony with the sentences to run consecutively. Arthur now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id*.; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523. Moreover, the uncorroborated testimony of the victim is sufficient to sustain a criminal conviction. *Haun v. State*, 792 N.E.2d 69, 72 (Ind. Ct. App. 2003).

Arthur argues that insufficient evidence was presented to support his convictions. He specifically contends that D.A.'s testimony was incredibly dubious and highly suspect. Under the incredible dubiosity rule, a court may "'impinge on the [finder of fact's] responsibility to judge the credibility of the witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity.'" *White v. State*, 846 N.E.2d 1026, 1032 (Ind. Ct. App. 2006), *trans. denied* (quoting *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001), *cert. denied* (2002)). The application of this rule is rare and is limited to cases where the testimony of a sole witness is so incredibly dubious or inherently improbable that it runs counter to human experience and

no reasonable person could believe it. *Herron v. State*, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), *trans. denied*; *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. "The incredible dubiosity rule applies to conflicts in trial testimony rather than conflicts that exist between trial testimony and statements made to the police before trial." *Buckner v. State*, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006) (citing *Reyburn v. State*, 737 N.E.2d 1169, 1171 (Ind. Ct. App. 2000)).

Arthur argues that because D.A. was only three years old at the time when the molesting occurred and because so much time had passed since the original allegations and the trial, D.A. would not remember things that happened so long ago without significant coaching. He believes that this is especially true because of D.A.'s lack of a statement to Detective Roseberry in November 2002, which was close in time to the original allegations. We disagree.

Arthur suggests that D.A.'s testimony was coached by her mother and great-aunt because D.A. testified that they had talked to her to get her ready for her testimony prior to trial, but on cross-examination, D.A. stated that her mother and great-aunt had only told her to tell the truth and that they had not told her what to say regarding the questions. *Tr*. at 144-45. Arthur also has not shown that D.A.'s testimony was inherently improbable or contradictory even though she did not make a statement to Detective Roseberry. Her trial testimony was consistent, and she testified both on direct examination and cross-examination that Arthur had molested her at least ten times by penetrating her "private" with his finger or his penis. We therefore conclude that the incredible dubiosity rule is not applicable.

Further, we also conclude that sufficient evidence was presented to support Arthur's

convictions. Arthur's contentions regarding the sufficiency of the evidence are a request for us to reweigh the evidence, which we cannot do on review. *Dickenson*, 835 N.E.2d at 551. As stated above, D.A. consistently testified at trial that Arthur had touched her inside of her "private" with both his finger and his "privates" at least ten times. Her great-aunts, great-uncle, and grandmother also all testified that D.A. had consistently told them that Arthur had molested her. Additionally, D.A.'s therapist had testified that when she asked D.A. to show her using anatomically correct dolls what Arthur had done, that D.A. had put the penis of the male doll inside of the female doll. Therefore, sufficient evidence was presented to support Arthur's convictions.

II. Sentencing

Arthur argues that the trial court erred in sentencing him because it ignored mitigating evidence that he had presented at trial, which consisted of his lack of a criminal history and his good character. Under Indiana Appellate Rule 7(B), this court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we] find[] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006) (quoting Ind. Appellate Rule 7(B)).

Here, Arthur was convicted of molesting his daughter, D.A., which is a heinous offense. Arthur had a criminal history consisting of three misdemeanor convictions and one felony conviction. The trial court sentenced Arthur to forty years for the Class A felony and six years for the Class C felony, with these sentences to run consecutively. Based on Arthur's character and the nature of the offense, we do not find these sentences to be

inappropriate.[3]

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.

[3] Arthur also argues that the six-year sentence for his Class C felony child molesting conviction was error because there was not a specific finding by the trial court as to whether the conduct alleged for this conviction was separate and distinct from the conduct alleged for his Class A felony conviction. He therefore contends that it was double jeopardy to convict him of both of these offenses. We do not find merit in this argument because the trial court did, in fact, specifically find that these two convictions were separate and distinct acts and occurred at different times. *Tr*. at 511-12; *Appellant's App*. at 10.